

Leaking Heating Oil Tanks Technical Workgroup Meeting

Meeting Notes

December 10, 2015, 9 a.m.

Virginia Department of Environmental Quality (DEQ)

Central Office, 2nd Floor Conference Room A

Meeting Attendees

The following members of the Leaking Heating Oil Technical Workgroup attended the meeting:

David Beahm, William “Billy” Willard, John Pollard, Garland “Gary” Moore, Robert Howard, Todd Pitsenberger, Heather Evans, Alex Wardle, and James Barnett

The following non-members were present:

John Giese (DEQ - moderator), Suzanne Taylor (DEQ - note taker), Betty Lamp (DEQ), Lindsay Trittipoe (NatLust), Jeanean Willard, and Justin Williams (DEQ)

Welcome and Introductions

John Giese, DEQ Petroleum Remediation and Preparedness Programs Manager, welcomed the technical workgroup to the meeting, discussed general meeting logistics and guidelines.

Mr. Giese reminded the workgroup that its creation constituted a public body and all meetings of the group are considered public meetings; any meeting of three or more members of the group where they will be discussing matters within the scope of the group must be noticed as a public meeting. Pursuant to statutory requirement, all public meetings must be announced on the Virginia Regulatory Town Hall website and Commonwealth Calendar. Workgroup members should send any information that group members would like to share to John Giese; John will then send the information out to all workgroup members. The group members should not use the “Reply All” function on emails. To do so would constitute a meeting subject to public notice.

Objectives of the Technical Workgroup

Mr. Giese reviewed the purpose of the meeting: pursuant to Item 363 of the State Budget passed during the 2015 Session of the General Assembly, DEQ convened a stakeholder working group to advise DEQ regarding current guidance and policy governing the cleanup of petroleum releases. The stakeholder group concluded their meetings on September 3, 2015.

A recommendation of the stakeholder group was for DEQ to establish a technical workgroup consisting of DEQ staff and consultants to “collaborate on technical issues related to risk assessments associated with underground leaking petroleum tank remediation and on improving communication between DEQ and consultants.” The workgroup attendees received a handout with the technical workgroup’s purpose, objectives, roles and responsibilities.

The objectives of the workgroup are as follows:

- To make recommendations pertaining to the appropriate level of risk assessment at leaking heating oil tank sites;

- To make recommendations, as necessary, pertaining to the appropriate level of investigation and characterization of discharges from heating oil tanks;
- To assess the adequacy of communication between DEQ case managers and environmental consultants performing investigation and characterization of petroleum releases, and
- To make recommendations, as necessary for the improvement of communications between DEQ case managers and consultants.

Discussion on Defining the Technical Issues Related to Appropriate Risk Determination

The group members brainstormed a list of following technical issues related to appropriate risk determination:

1. The protection of groundwater not being used for human consumption. Is there a groundwater contamination threshold that warrants a greater level of assessment or remediation than DEQ currently requires?
2. Vapor intrusion risk posed by leaking heating oil tank sites;
3. Decision criteria for categorizing releases from heating oil tanks including:
 - a. Appropriate data on which to base categorization,
 - b. Number and location of soil samples and
 - c. Definition of “significant quantity of saturated soil.”
4. Type of receptors and distance to those receptors;
5. Criteria for conducting a quantitative vs. qualitative risk assessment and
6. The role of professional judgment and experience in the risk analysis process.

► Action Item

DEQ is to share a copy of the draft Environmental Pollution Report (EPR) form with the workgroup members.

Members are to review the draft EPR and be prepared to discuss the appropriate amount of information to capture on the EPR when reporting a heating oil release to DEQ.

► Action Item

DEQ is to share the Petroleum Program’s initial views on the vapor intrusion guidance with workgroup members. DEQ will provide links to or copies of the following vapor intrusion guidance documents: Interstate Technology & Regulatory Council’s (ITRC) Vapor Intrusion Pathway: A Practical Guideline and EPA’s *Technical Guide for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites*.

Discussion on Defining the Communication Issues between Consultants and DEQ

The technical workgroup members identified the following issues related to communication between environmental consultants and DEQ:

- DEQ does not routinely share case decision rationales with consultants. Consultants are not able to explain to homeowners why DEQ has assigned a particular risk category or closed their case.
- Electronic mail is an efficient means of communication between DEQ and consultants, but official letters from DEQ facilitate better communication with homeowners and not all consultants are receiving the official DEQ closure letters sent to homeowners.
- DEQ closure letters are not consistent in their message to homeowners. Some contain only the release date and case decision and others contain DEQ’s technical rationale for the case closure.

- Copies of signed DEQ case closure letters, if shared with consultants could eliminate the need to request those letters through a FOIA request when needed for real estate transactions. This could be a benefit to DEQ as well, since they have to process the FOIA request.
- When a consultant is late submitting a report to DEQ, communication regarding the reason for lateness could be improved. DEQ is more concerned about getting the remediation done than writing the report. A phone call or email from the consultant explaining whether the field work has been done would be helpful.

Consensus Item

The group reached consensus on the following: DEQ should share the rationale for case closure with the consultant for all cases.

Much discussion also took place within the group surrounding the best form(s) of case closure documentation and communication method (email vs. letter). The advantages and disadvantages of various approaches were acknowledged. The group was unable to reach consensus on the best overall approach achievable with existing DEQ resources, but they agreed to revisit the issue at the next meeting.

► Action Item

DEQ will share example case closure memos with the workgroup.

DEQ Reconsideration Panel

Some discussion took place regarding the DEQ Reconsideration Panel and expanding the panel’s decisions beyond denial of individual claims, including topics such as fund denial and case closure decisions. The group agreed to revisit this topic at a future meeting.

What Constitutes a Release?

Some discussion took place regarding release reporting requirements and practices for heating oil cases. Issues were raised regarding timing of the report as it relates to the receipt of analytical data from the lab. This was framed by the discussion of which activities are eligible for reimbursement, since activities performed more than 24 hours prior to the release report are not eligible.

Items to Discuss at Next Meeting in March 2016

The group agreed to discuss the following items at the next workgroup meeting in March (exact date and location to be announced later):

- Discuss the “Environmental Pollution Report” form comments.
- Further discuss groundwater protection and clarify the issue of no-risk sites in terms of groundwater protection and the cost expense/benefit to the Department and the Commonwealth.
- What is the technical argument for risk to groundwater when leaving contaminated soils in the ground?

► Action Item

The consultants will articulate to the workgroup their technical argument regarding risks to groundwater posed by contaminated soils.

Public Comments

Public comments were received from the following individuals at the meeting:

Lindsay Trittipoe: Mr. Trittipoe raised several concerns regarding the issues discussed, particularly related to the issue of protection of groundwater. He recommended retesting some sites (in Virginia) where there was a questionable case closure. This could provide empirical evidence as to whether closing the site was the right decision. He also said legislation may be needed to address issues like giving DEQ authority to prevent a homeowner from continuing to use a leaking tank.

Jeanean Willard: Ms. Willard noted as consultants they are frustrated because although they can recommend that homeowners report possible leaking tanks, in situations where a homeowner is reluctant to report a release, the consultant can't report it to DEQ unless the homeowner gives them permission to do so.

Meeting Adjourned

The meeting was adjourned at 3:42 p.m.

Next Technical Workgroup Meeting

The next meeting of the Leaking Heating Oil Technical Workgroup will be in March 2016. The exact date, time and location of the meeting will be announced on the Virginia Town Hall website within seven days in advance of the meeting and on the DEQ's web page.